89-365

AUG 29 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

EARLENE POLYAK — Appellant

vs

THOMAS STACK AND
HENRY HENRY & STACK — Appellees

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JURISDICTIONAL STATEMENT

EARLENE POLYAK
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80 pp

QUESTIONS PRESENTED

1. Is Tennessee Statute Partition in Partition in Kind 29-27-117, on which non-resident relies invalid and repugnent to the Constituion of the United States?

2. Should non-resident be granted equal relief under this state statute in Lawrence County under state judge,as awarded by state judge in the same circuit in Maury County in 1981, and by state judge in same circuit in Wayne County in 1987?

3. Should non-resident property be sold without compensation, jury trial, and without appeal ever being heard in any Court?

4. Do lawyers have interest in property when they are awarded attorney fees in order to sell?

5. Should United States District Judge award "absolute judicial immunity" to state judge in case under diverstity of citizenship?

6. Is lack of assistance of trial counsel constitutional question?

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Appellant-Plaintiff below is Earlene Polyak,No. 87-5717/63/94, and No. 86-5199 from No. 1:85-0125, United States District Court, Middle district of Tennessee.

Appellee-Defendant is Thomas Stack, Henry Henry & Stack.

Companion Cases: All cases arise out of Frank Hulen and Wilma Lesnansky v Earlene Polyak No. 84-4060(D.C.1:84-0082) and includes; Frank Hulen and Wilma Lesnansky v Earlene Polyak No. 89-5650(D.C. 1:84-0082) consolidated Earlene Polyak v Frank Hulen and Wilma Lesnansky No. 89-5648(D.C. 1:84-0083);Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County No. 89-5649(D.C. 1:85-0116); Earlene Polyak v Wilma Lesnansky and Frank Hulen No.89-5496(D.C. 3-89-X-16; Earlene Polyak v Buford Evans & Sons No. 89-5320/5707)(D.C. 1-89-X-01), and Ealrne Polyak v William Boston Boston Bates & Holt D.C. 1:86-0036.

OPINIONS BELOW

The opinions of the Court of Appeals for the Sixth Circuit in Case No. 88-5717/63/94, and 86-5199, are set forth in appendix A. The opinions of the United States District Court of the Middle District of Tennessee are set forth in Appendix B. And the opinions relating to the above case in companion cases are set forth in Appendix C.

JURISDICTION

The order of the United States Court of Appeals, and the Petition for Rehearing were denied on June 5, 1989, and this appeal is within ninety (90) days thereof.

The Notice of appeal and Motion to Stay Mandate in the Court of Appeals were timely submitted on June 7, 1989.

This appeal is taken pursuant to 28 U.S.C 1254(2).

he jurisdiction of this Court is invoked in the Constitution ,Article III, Sec.2,

which states that the judicial power shall extend to all cases of law and equity, between a state and citizens of another state; between citizens of different states.

The jurisdiction is invoked in federal laws: 42 U.S.C. Secs. 1881; 1982, and 1983; 28 U.S. C. 1443(1)(2); 42 U.S.C.A. amen. 1965; Rule 60.02(b) Federal Rules of Civil Procedure; 5 U.S.C. 504, and 28 U.S.C 2403.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the fifth Amendment provides as follows:

> No... person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

U.S. Cons. Amen. V Cl. 3 & 4.

The pertinent portion of the Seventh Amendment provides as follows:

> ...where the value in controversy shall exceed twenty dollars, the right of a jury trial shall be preserved...

U.S. Cons. Amend. VII.

The pertinent portion of the Fourteenth Amendment peovides as follows:

> No state shall make or enforce any laws which shall abridge the priveleges or immunities of citizens of the United States, nor shall any state deprive any person of life; liberty; or property nor deny any person within its jurisdiction the equal protection of the law.

U.S. Const. Amend. XIV.

Tennessee Statute Partition in Kind 29-27-117:

> If exact partition cannot be made without material injury to the parties, or some one of them, the commissioners, may make partition as nearly equal as they can and charge the larger shares the sums necessary to equalize all shares.

Tennessee Code Annotated 1932.

STATEMENT OF THE CASE

This case involves the constitutionality of the affirming by the United States Court of Appeals for the Sixth Circuit of the denial of protection by the United States District Court, Middle District of Tennessee, of equal protection of non-resident of State Statute

Partition in Kind 29-27-117.

It involves the equal protection of due process and deprivation of civil and constitutional laws and right and interest in kind and severalty under state statute on which non-resident relies, and if statute is invalid and repugnent to the constitution.

This case involves the responsibility for the professional skill and care for the protection of non-resident's right and interest in property under state statute provided by the constitution by Thomas Stack, Henry Henry & Stack.

The property lies within an area with high potential for investment about twenty-two miles south of the new General Motors "Saturn Plant" in Spring Hill, Tennessee.

The jury trial demanded in the Complaint 1:85-0125, was only scheduled after appeal of the Denial of Restraining Order against sale pending appeal, 86-5199, and timely Notice of Appeal with the submission of Jurisdictional

Statement to this Supreme Court, but denied jurisdiction and turned over and denied writ of certiorari No. 86-1899(Appeal No. 86-5199).

Pro se does not have any knowledge or expertise in the legal profession, but dismissed counsel for the defense after Thomas Stack, Henry Henry & Stack, signed order for sale of property in which her right to partition was protected in Tennessee Statute partition in Kind 29 27-119, without any compensation, jury trial on October 19, 1983(App. C p.36).

This property in addition to Pro se travel trailer in yard was advertised and sold without any compensation, jury trial and without appeal ever being heard in any Court for invalid lein upon her "interest therin. " A party makes Affidavit to advertisement (App.C p. 26-27).

This second order to sell property for invalid lein upon "interest therein" was submitted by Robert Boston to the Honorable Jim Hamilton on August 21, 1987 (App. C p.33-35).

This evidence of advertised sale of

property was disregarded during intermittent hearing, naturalizations, sentencings and delayed defense attorney's sale of property on June 3, and entered after directed verdict by the Honorable Thomas A. Higgins(App. B p. 24).

On May 31, 1988, Pro se asked District Judge again to disqualify after Judge asked Thomas Stack, and Attorney Bruce Peden to rise and introduced them as lawyers to jury.

A Motion for Disqualification in this case and No. 1:86-0036 Earlene Polyak v William boston bates & Holt, on grounds that pro se believed the Honorable Thomas A Higgins biased for local lawyers and prejudiced to to her was denied on September 24, 1987, and motion with affidavit still pending in District Court No. 1:87-0075 (App.B.p.18).

The Court remanded pro se timely Complaint and Demand for Jury Trial in Counter-Claim to Robert Boston's order to sell property for invalid lein upon her "interest therein"submitted to the State Chancery Court

and District Court on September 29, 1987.Pro se alleges that her partition in kind,right investment and interest on investment protected by statute, which Defendats retained to protect has been sold and she demands new Trial for relief(App. C.p. 40).

The appeal to denial of Restraining Order No. 86-5199 was on appeal, pro se in Coronary Unit scheduled for second by-pass surgery Universtiy of Alabama when Judge Higgins dismissed three companion cases to the "taking of her property" 1:84-0082 Frank Hulen v Earlene Polyak; 1:84-0083, Earlene Polyak v Frank Hulen and wilma Lesnansky;and Buford Evans & Sons v Earlene Polyak(Counter Claim) after remand of 1:87-0075, on October 28, 1987.Motions for continuance and telegrams from hospital bed disregarded.

Case No. 1:85-0116 Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County, to which 1:85-0120 was joined under 28 U.S.C 1441(c) after pro se sought federal

protection as a result of Judge Hamilton's denial on November 7, 1985 to forward records for appeal as a right Rule 3 TRAP,was dismissed on November 13, 1985.

Pro se believes Judge Higgins carrying out enjoin against filing further complaints regarding her property by the Honorable Thomas A. Wiseman on November 13, 1985,in which state judge awarded "absolute judicial immunity"

On April 30, 1986, in letter to John P. Hehman, Clerk Court of appeals stated,"That order was entered because of previous filing of Mrs Polyak against various persons of this Court "..she should be severly punished therefor."

All complaints regarding property have been dismissed including instant partially heard case 1:85-0125, and all appeals have affirmed dismissals in docket control.

All recent complaints and demands for relief resulting from unconstituional sale

of property(with partition Defendants agreed to protect)without notification of date, time, amount of proceeds and without entering order of sale for appeal and right of redemption pursuant to rule Rule 60.02(b) Federal Rules of Procedure, have been dismissed and listed in the companion cases on page one of this brief.

On June 20, 1988, pro se was scheduled for jury trial with fourteen witnesses on subpoena again in 1.86-0036 Earlene Polyak v William Boston Boston Bates & Holt when confronted to pre trial conference before magistrate against her permission and without notification.

Robert Boston was allowed to prepare final Pre Trial Order with dismissal written on its face in bias for his father,William Boston, Boston Bates & Holt, who represented the family since 1976, seven(7) years during settlement by agreement before dividing loyalties in hearing on July 29, 1983.

Pro se prepared with fourteen witnesses on subpoena again, but Judge Higgins con-

tinued trial without date on November 7, 1988. She contacted witnesses on subpoena again and prepared again for jury trial on May 1, 1989.

Robert Boston submitted motion for dismissal on April 28, 1989, and only minstral act remains before dismissal of all cases in the District Court (motion under consideration)

Thomas Stack promised jury trial in 1974 Chancery state case, but pro se subjected while acutely ill after asking two times for re-sheduling, to hearing against nationwide warning to heart patients to stay out of 102 degree heat-wave on July 29, 1983(App. C. p. 36).

(2) She was taken across county lines in Maury County, county other than complaint registered and land lies; Judge Hamilton verbally ordered ordered property sold while conductiong hearing when jury out in trial another case;(3) Wilma Lesnansky signed complaint but did not even come to hearing to testify about settlement by agreement initiated by her and Frank Hulen in 1976; (4) Roger Lesnansky(her son)

aware of settlement by agreement and helped draw dividision lines, but was allowed to go to Florida.

And (5) Alex Polyak who did the physicial work restoring house on pro se agreed partition with removal and replacement of new roof twelve hundred($1200,00) dollars, replacing electrical wiring, telephone installation,insurance, termite control, clearing and hauling debris, and seven years restoration and maintenance at our own expense, was sent from the room and not allowed to testify.

Thomas Stack stated that he"wanted fifteen hundred ($1500.00) dollars for ressearch and to go against his friends in Lawrenceburg." Henry Henry & Stack cashed check for $1500.00 included with letter stating "It is my understanding that if we are not successful in Lawrenceburg, we will appeal to a higher Court."

Thomas Stack, Henry Henry & Stack did not enter bills for restoration, evaluation of

property by Buford Evans & Sons, Memorandum Brief of Tennessee Statute and case law supporting Partition in Kind, and arrange for a transcript of the proceeding (App. C. p. 36).

On August 22,1983, pro se went to Pulaski to confront Mr. Stack, and Joe Henry about the failure to respond to letters and telephone calls concerning her defense, nd to check her property in Tennessee. She demanded new trial (to hearing on July 29, 1983) within three days on August 1, 1983

On December 19, 1983, Judge Hamilton denied Motion for New Trial and Alter or Amend order to allow reimbursement for restoration before disbursing proceedings, and instructed pro se to get appeal to order in (Court of Appeals, Tenn) within ninety (90) days.Judge instructed William Boston to prepare order of denial to hearing.

On April 26, 198 pro se appeal to UN-APPEALABLE JUDGMENT prepared by Boston Bates & Holt and signed by Charles Holt and Judge

Hamilton dismissed in the Court of Appeals, Tennessee, on appeal to UNAPPEALABLE JUDGMENT and all attempts in application for permission to appeal denied in state Courts. There is NO FINAL JUDGMENT (App. B. p.29).

On December 26, 1984, pro se was subjected while acutely ill unexpectedly without any preparation to the second trial Buford Evans & Sons lawsuit for invalid survey of land(which already divided in settlement by agreement in 1976). And Mr. Stack testified for Buford Evans against her.

Buford Evans alleges that survey conducted to prove property could be divided equally for Henry Henry & Stack, but in hand-drawn map Tract # 3, correlates with order stating property could not be divided prepared by Boston Bates & Holt on October 19, 1983, although Mr. Stack did not enter realestate evaluation (App. C.p. 39).

Contrary to description of Tract #3, as smoothe flat land, it has terraces and trees.

which are clearly visible on the United States Department of Agriculture Ariel Map (Compare Order App. C. 32-35 & Map p. 39).

On May 25, 1988, contrary to Local Rule 11(2) United States District ourt, which exempts pro se from pretrial conferences, she was scheduled in addition to pretrial conference with Henry Henry & Stack,85:0125, also,R.Boston, Boston Bates & Holt,86-0036.

Pro se developed heart pain during the night and was hospitalized in Cardiac Unit Vanderbilt University Hospital, but she kept scheduled jury trial(hearing) on May 31,1988

In the order on March 28, 1989, pro se believes this language a reflection of what she believes is constitutional right and sincere effort to defend her right to properties,is rendered unworhty of consideration and subject of merriment and mockery within the Court of Appeals, Sixth Circuit, Petition for Rehearing denied June 5, 1989.

REASONS WHY QUESTIONS REQUIRE PLENARY CONSIDERATIONS

1. THE COURT OF APPEALS MISAPPRENEHDS FACTS AND FEDERAL LAWS IN FAILURE TO RESCUE IN DISMISSAL IN DOCKET CONTROL

The United States Court of appeals misapprenends the facts that the many motions reguarding bias for local residents and prejudice against pro se litigant in conflict of interest and failure to rescue disregarded in abuse of discreation by the Honorable Thomas A. Higgins are supported with verbal request to Court on May 31, 1988, and pro se makes Affidavit(Ex.1).

On May 31, 1988, after Judge Higgins asked Thomas Stack, and his lawyer to stand and introduced them as lawyers to the jury in open Court Judge Higgins again refused to rescue in this public display of discrimination against pro se.

The Court started to shout at pro se with the first witnesses on subpoena(all witnesses on subpoena except husband) and threaten to dismiss this case, sometimes sending jury out of the

courtroom.Contrary to Court of Appeals order, this hearing(jury trial) was conducted intermittently between sentencing,naturalization of local persons, and delayed while Mr. Peden closed another sale of property.

All complaints dismissed,and Case No. 86-5199,formerly before this Court on appeal from the Sixth Circuit, in appeal to affirming of Denial of Restraining Order in the District Court on January 5, 1987,and Petition for Rehear En Banc,docket control, Supreme Court No.1899, Pro se motions to rescue were disregarded,denied and Motion for Reconsideration of Rescue pending before Court on May 31, 1988(App.B

After the Court resumed pro se cases and stated that she was guilty in initial order on May 12, 1986,and stated closed case on July 17, 1986,she submitted motion for Disqualification as a result of her belief that Judge Higgins biased for lawyers and prejudcied to her, and prejudice extra judicial in nature.

In the order closing case on July 17, 1986

No. 1:86-0036 Earlene Polyak v William Boston, Boston Bates & Holt, the Court stated that either party(Robert Boston, son of William Boston,Boston Bates & Holt) could open case on good cause, but pro se would have to have a "certificate from physician" to open case when she suffers from incurable disease common to our society in heart-failure and complications.

On September 24, 1987, the Court denied motion for Disqualification, and remanded pro se complaint and counter-clain against Robert Boston's order to sell property on his in-lein upon her "interest therein" submitted to Jim Hamilton, state judge, on September 21, 1987, on September 29, 1987 No. 1:87-0075.

On April 1, 1988, pro se learned property advertised for "sale in local "Advocate", but the Court continued to disregard this evidence during HEARING on May 31, and entered Affidavit of party after (hearing) on June 22, 1988.

During this time, Judge Higgins dismissed three cases 1:84-0082; 1:84-0083 and 1:85-0120

while pro se in Cardiac Unit of University of Alabama sheduled for second by-pass surgery cases dismissed with prejudice on October 28, 1988.Dismissals to advantage of adverse party.

Judge Higgins resumed pro se cases after the Honorable Thomas A. Wiseman dismissed 1:85 0116 Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County granting "absolute judicial immunity to state judge.

> Congrss intended 1983 to independent protection for federal rights and there is nothing to suggest that Congress intended to extend the common law doctrine of judicial immunity to insulate the state judge completely from federal review. United States v Detroit,200 US 321 26 S ct 282 287 50 Led 499.

In this Order on November 13, 1985, Judge Wiseman enjoined pro se from further filings of complaints regarding her property in Lawrence County.

Judge Higgins resumed cases on May 12, 1986, after Judge Wiseman's rescual and stating letter on April 30, 1986, " That order was enter because of previous filings of Mrs. Polyak against various persons in this Court.

A review of the record will reveal that pro se tried to avoid local bias prejudice and discrimination against her in state courts in in Columbia area by filing complaints under diversity of citizenship in United States Court in Nashville, but cases scheduled in Columbia.

> Appellant's do not contend that state officials are not immune from suits to restrain unconsitutional acts undertaken in their official capacities. The law clearly recognizes the right of an interested party to force state officials to act in accordance with the constition, Jordon v Gilligan, 500 F 2d 701 705(1974).

Judge Hamilton disregarded, dismissed and denied all petitions, motions and applications and refused to rescue on December 26, 1984, in Circuit 10647, Buford Evans & Sons v Earlene Polyak. She was enjoined on November 13, 1985.

Thomas Stack testified against pro se in this case and Judge Hamilton denied motion to forward records for appeal to state court, and denied due process and deprived her of civil and constitutional laws and property rights pursuant to 42 U.S.C. 1981;1982 and 1983.

Pro se property has been sold without any compensation, jury trial(promised by Thomas Stack) and without appeal ever being heard in any Court. She has been denied appeal in the state courts and enjoined in denial of federal protection provided in due process,compensation jury trial and equal protecion in constitution.

> And the relevant factors determning whether the act of a judge is a "judicial" one relates to the nature of the act itself, whether it is a function normally performed by a judge to the expectation of the parties.Stupmt v Sparkman,435 US at 1107.

The Court of Appeals misapprehends the facts as set forth in motions on bias and prejudice in expected rescue and U.S.C. 28 144:

> Whenever a party at any proceeding in a district court makes and files a timely affidavit that the judge before whom a matter is pending has a personal bias or prejudice either against him or in favor of party, judge shall proceed no further, but another jusdge shall be assigned to hear proceeding.

This statute provides for the invalidation of all orders of Judge Higgins in pro se cases.

2. THE COURT OF APPEALS MISAPPRENENDS LAW IN STATE STATUTE PARTITION IN KIND AND FACTS IN NEGLIGENCE AND MALFEASANCE.

The Court of appeals misapprenends law in Tennessee Statute Parition in Kind 29-27-117, and facts in negligence and malfeasance in denial of Petition for Rearing En Banc on November 25, 1988, dismissal of Appellant's Pro Se Brief in appeal in docket control March 28, and Petition for Rehearing on June 5, 1989.

The motion to verify mistakes in Transcript of the Proceedings submitted to the Court of appeals by Henry Henry & Stack,denied by Judge Higgins was affirmed in this order 89-5717/63/94. The motions to open new evidence in Affidavit of advertised sale, deposition of expert witness, and motion to stay mandate for appeal were denied.

The right to partition in kind protected by state statute is provided in due process and just compensation in Fifth;right to jury trial Seventh,and due process and equal protection in every state in fourteenth Amendment.

Thomas Stack promised jury trial and Defendants cas~hed check for fifteen hundred ($1500.00) dollars with statement" It is my understanding that if we are not successful in Lawrenceburg, we will appeal to a higher Court"

Defendant's did not enter bills for restoration of forty-six (46) year old house for retirement home; Buford Evans & sons survey of property(already divided in sett emnt in agreement in 1976); memorandum Brief, and prepare transcript of proceedings on July 28, 1983.

Pro se was not awarded any compensation, but attorney fees granted October,19,1983.

Plaintiff's Exhibit No.1, May 31,1988,of Technical Record Chancery 194(83-405-II) proof that th above items are not entered in record and contains two Notices of Appeal.Pro Se appeal good before allowing Defendants to take back to Circuit Court of Lawrence county.

Pro se contends that Defendants negligent in providing professional skill and ca e in proteciton of constitutional rights under

statute of pro se in this partition of property sold, and in addition they were awarded attorney fees in initial order on October 19, 1983, which Robert Boston included in second order to sell property on August 21, 1987.

Tennessee Statute Partition in Kind 29-27-117 is supported in abundance of case law:

> If exact partition cannot be made without material injury to the parties, or some of them, the commissioners may make the partitions as nearly equal as they can and charge the larger shares the sums necessary to equalize all shares. TCA 1932.

Pro restored house on her agreed partition and maintained it at her own expense to date.

> The court may ... in accordance with the wishes of one or moore cotenants, order an allotment of shares, in kind and serer alty, and direct the sale of the other portion if it is not susceptable to partition in kind, Vandenburg v molder, 4 Tenn. Civ. App(Higgins) 11(1919).

> Pro se invested accred interest 13years.

> ...the promise with knowledge of promiser takes possession of land and makes improvements, Courts in almost all states have granted"specific performance."Hagerty v Hagerty, Tenn 172 259(1919).

In recent Tennessee case, "Parole partition followed by possession is binding and en-

forceable." Martin v Taylor,(Tenn. 1975)521 S.W. 582.

In adjoining counties to Lawrence County Tennessee, Maury county, No. 80-83,Watson v Pullian, partitioned by the Honorable Robert Jones on February 9, 1981.(litigants sisters).

On July 23, 1987, county adjoining Lawrence to the south side, Wayne County No. 3011 E.Richardson et al, v D.Richardson et al,partioned by the Honorable James L. Weatherford, which involved grandmother and heirs.

In addition to negligence in entering bills for restoration, Memorandum Brief, notice of appeal, Defendats retainted Buford Evans & sons for invalid survey without pro se knowledge or permission.

Hand-drawn maps correlates Tract #3,with order to sell against statute, which requires no equal dividion, prepared by Boston Bates & Holt. Thomas Stack testified against statute:

> 23-3-105. No attorneyshall be permitted in giving testimony against client who consulted him professionally to disclose any communications made to him...

This second law suit is second negligence of pro se heart problem when she was obligated to travel over one thousand(1000) miles in the back of car on pillows while acutely ill,on unexpected notice and without representation. The Clerk demanded that she bring copy of deed to second property before he would allow appeal, and second invalid lein.

On July 29, 1983, Mr. Stack refu d for the second time to reschedule hearing in 102 degree temperature against nationwide warning to heart patients.

> Claim of lack of assistance of trial counsel presented important constitutional question warranting granting of writ of certiorari.Canely v cockran, 1962 F1.82 S.Ct Us506.

(b) THE COURT OF APPEALS AFFIRMING DISMISSAL WITHOUT DEFENSE TAKING STAND IS UNCONSTITUTIONAL.

The affirming of directed verdicted with Defendants taking stand and allowing case to go to jury is unconstitutional denial of due process and deprivation of property right

On December 3, 1985, Judge Wiseman

granted pro se filing of complaint and 'emand for a jury trial "this petition presents allegations of attorney negligence or malfeasance.

> Pro se finds negligence is failure to act
>
> especially, the failure to take reason-precautions to <u>avoid injury to persons</u> or property.

and malfeasance "performance of same act that wrongful.(malpractice: medicine or surgery).

Pro se does not have knowledge or expertise in the legal profession and she is in extraordinary situation. She was denied constitutional right of due process when lawyers did not take stand and allow her to evelop negligence, and malfeasance(contract).

Pro se has no access to expert testimony to prove malpractice. Judge granted Quash to Michael Cain, 11 three lawyers hostile, and on subpoena, and Judge disregarded William Boston,No. 1:86-0036, Earlene Polyak v William boston Bates & Holt. Judge would not allow questioning of Mr. Tom Moore on Tennessee Professional Code grounds(See TR)

In Cleckner v Dale, exceptions are made for extraordinary cases."The lawyers standard of care, except in the most extreme cases"... Cleckner v Dale, 719 S.W. 2d 535 at 54o(Tenn. App. 1986).

The Court of Appeals makes exception in this case 87-5199(1:85-0125) taking jurisdis-diction " given pro se status of the pending action..."See generally Petro-Valley Oil Refining Co. V U.S. Department of Energy, 633 2d 184 199(T.E.C.A. 1980).(86-5199)

In total disregard for pro se constitutional right to partition of property protected in state statute and case law, fact award of attorney fees on sale of property in Item #3 order for sale on October 19, 1983, Court of appeals dismisses two appeals in docket control 86-5199, and 87-5717/63/94 on Defendant's lack of interest on borrowed term from medicine and surgery of for legal malpractice. To hold attorney may not be held liable for loses to clients..for trial tactics,

professional judgment is not to say, however,

> that an attorney may not be held liable for any of his actions in relation to a trial. He is still bound to exericise a reasonable degree of skill and care in all of his professional undertakings. Woodruff v Tomlins, 616 F 2d 925(6th Cir. 1980). 449 US 888 66 L Ed 114.

In view of the above, and Court of Appeals affirming of District Court's dismissals of 86-5199, and 88-5717/63/94 , and failure to review directed verdict after affidavit of advertised sale of properties for invalid lein by adverse parties, Pro se contends that orders be set aside pursuant to Rule 60.02 (2) Federal Rules of Civil Procedure.

Pro se believes that sale of property including attorney fees is attorney interest, and thc No. 86-5199 Denial of Restraining Order should be reviewed with 87-5717/63/94, pursuant to exception in amended U.S.C. 1254(2).

CONCLUSION

Pro se suffers irreparable damage in the sale of her properties without jury trial, compensation, and without appeal ever being heard

in any Court, in the loss of investment, interest, accured interest in investment, right in property, and the loss to never be regained in her retirement home. She pleads for relief as set forth in complaint and relief for irreparable damages in jury trial.

On the 18th day of August, 1989.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364.

Certificate of Service

I certify that an exact copy of this pleading has been mailed to Mr. Samuel Garner, 119 South first Street, Pulaski, Tennessee 38478.

_____
Earlene Polyak

STATE OF MICHIGAN
COUNTY OF WAYNE

_____
NOTARY PUBLIC

My commission expires:_____

SUPREME COURT OF THE UNITED STATES

EARLENE POLYAK

V

THOMAS STACK AND
HENRY HENRY & stack

AFFIDAVIT

Affiant Earlene Polyak deposes and says:

That she overheard the honorable Thomas A. Higgins state "Iam a Lawyer, Ithink in terms of one-third" on May 31, 1988. And Affiant verbally asked Judge Higgina to rescue after lawyers Bruce Peden and Thomas Stack asked to stand and introduced to jury as lawyers.

That Judge Higgins started shouting at pro se with first witness and threatening to dismiss case sonetimes sending jury from the room. And hearing in directed verdict conducted during naturilization, sentencing and delayed while mr. Peden closes sale of property.
8/18/89

Earlene Polyak

STATE OF MICHIGAN
COUNTY OF WAYNE

Notary Public

Comm. expires:

APPENDIX A

In the United States Court of Appeals for the sixth Circuit, submitted in Pro Se Appellant's Brief.Hearing En Banc Denied.

Earlene Polyak v Thomas Stack, Henry Henry & Stack No. 88-5717/63/94.

Notice of Appeal submitted while Motion for New Trial held No. 88-5717,Notice of Appeal Amended No.88-71763, which required New Notice of appeal No. 88-5794.

Appeal dismissed March 28, 1989.

Petition for Rehearing denied June 5,1989.

BEFORE: MARTIN AND MELBURN, Circuit judges, and Holschuh, District Judge.

No. 86-5199

Appeal Denial of Restraining Order dismissed on January 5, 1987.

Petition for Rehearing En Banc denied on March 3, 1987.

BEFORE: GUY, Circuit Judge, EDWARDS Senior Judge and EDGAR U.S. District Judge.

No. 88-5717/5763/5794
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
Plaintiff-Appellant

v

THOMAS STACK AND
RENEY HENRY & STACK
Defendants-appellees

The court having received a motion for hearing en banc, and the motion having been circulated to all active judges of this court, and no judge having favored the suggestion,

It is Oredered that the motion be and hereby is denied.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

V

THOMAS STACK AND
HENRY HENRY & STACK

TO CHIEF JUDGE

No. 88-5717/63/94
NO. 86-5199
D.C. 1:85-0125

AMENDED
NOTICE OF APPEAL

Appellant amends notice of appeal to denial of Petition for Rehearing on June 5,1989 to the supreme court of the United States to include the denial of Restraining order and Petition for Rehearing on January 5, 1987 No. 86-5199.To Chief Judge Rule 8(b)& (c).

The Court of Appeals took jurisdiction under 86-5199 pursuant to 28 U.S.C. 1292(a)(1) "given the pro se status of plaintiff." this Court ruled injunction against sale "beyond scope, but in 89-5717/63/94, this Court ruled motion for stay "not proper."

Appellant contends that her claim for relief is to negligence Law: unreasonable or imprudent action or failure to act, especially the failure to take reasonable precautions to

avoid injury to property or person.' and at no time has she alleged malpractice.

In 86-5199, this Court ruled because of malpractice Defendant's do not have interest in property, but in 88-5717/63/94 malpractice was not proven.

appellant contends her"right, investment and interest in Partition in Kind supported by this state statute 20-27-117, and Appellee negligence in protecting pro se, and question should be certified to determine validity to the supreme Court pursuant to 28 U.S.C. 1254(2).

On the 20th day of june, 1989.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Certificate of Service

i certify that a true copy of this pleading has been mailed First Class to Samuel Wagner, 119 S 1st St. Pulaski, Tennessee38478

Earlene Polyak

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

RECEIVED JUN 9 1989

v

THOMAS STACK AND
HENRY HENRY & STACK

NOTICE OF APPEAL

Appellant gives notice of appeal to the affirming of conflict of interest and failure to rescue in the abuse of discreation by the Honorable Thomas A. Higgins in the United States District Court by the Court of Appeals in docket control and denial of rehear on June 5, 1989, to the Supreme Court.she appeals discrimination of Clerk's assignement - paid appeal tp Pro Se Appellant's Brief and formia pauperus status without oral argument in the denial of due process and deprivation of the Fifth, Seventh and fourteenth Amendments.

ppellant appeals the misapprenhension of of the Courts disregard for the fact that she asked for certification of question in denial of federal protection of equal protection of

State Statute Partition in Kind 29-27-117 renders statute invalid and repugnent to the constitution.

This is old case 1:85-0125.

Appeal is taken pursuant to 28 U.S.C. 1254(2).

On the 7th day of June 1989.

Respectfully submitted,

Earlene Polyak
3179 Middleifield Dr.
Trenton, Michigan 48183
(3130 676-3364

Certificate of Service

I certify that atrue copy of thie pleading has been mailed First Class to Samuel Warner, 119 S. 1st St. Pulaski, Tennessee 38478, and to Mr. Joseph Spaniol, Supreme Court, Washingtcn District of Columbia 20543.

Signed Earlene Polyak

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
Plaintiff-Appellant

FILED JUN 5 1989

v

THOMAS STACK AND
HENRY HENRY & STACK
Defendant-Appellees

BEFORE: MARTIN AND MILBURN, Circuit Judges and Holschuh District Judge.

This pro se appellant has filed a petition for rehearing of this Court's March 28, 1989, order affirming the decision of the district court and denying various motions filed in this court.

After careful consideration, the panel concluded that it acted under no misapprenension of law or fact in issuing its order. Fed. R. App. 40(a).

Accordingly, it is ORDERED that the petition for rehearing hereby is denied.

ENTERED BY ORDER OF THE COURT

Signed leonard Green Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Plaintiff-Appellant

FILED MAR 28 1989

v

ORDER

THOMAS STACK AND
HENRY HENRY & STACK

Defendant-Appellees

BEFORE: MARTIN AND MELBURN, Circuit Judges and HOLSCHUH, District Judge.

This case has been referred to a panel of the Court pursuant to Rule 9(a) Rules of the Sixth Circuit. Upon examination of the briefs and record, this panel unanimously agrees that oral argument is not needed. Fed. R. 34(a).

Earlene Polyak seeks review of the dis-rtict court's judgment granting a directed verdict for the defendant's in Polyak's diversity suit for legal malpractice filed against her former attorney and his law firm. In essence, Polyak alleged that Stack's malpractice in the handling of her defense to a Tennessee land partition suit resulted in an adverse order that the real estate be sold, thereby

depriving her of the use of the property. Polyak also filed a motion seeking rescual of the federal trial judge, which was denied.

The matter was heard before a jury during a four-day trial, in which Polyak proceeded pro se. At the close of Polyak's case, the defendant's motion for a directed verdict was grantedby the district court. The court applied the law of Tennessee pursuant to Erie Railroad C. v Thompkins, 304 U.S. 64(1938), and concluded that Polyak had failed to prove the necessary elememts of legal malpractice claim.

Polyak sought timely reconsideration of the judgment which was denied. She appealed the final judgment of the district court,and filed two subsequent notices of appeal seeking review of the denial of the motion to reconsider. the appeals are consolidated for the purpose of appellate review.

On appeal, Polyak argues that she proved her case before the jury and that the directed

verdict deprived her of the right of rebuttal. Polyak claims that she was prejudiced when the trial judge shouted at her in front of the jury and that the judge erred in failing to rescue himself from her trial. She further claims that her attorney committed malpractice by permitting her to testify in a state court wearing sunglasse the issues are fully briefed. Polyak has also filed motions seek ing stay of the sale of property and seeking to verify and supplement the record on appeal,as well as a Petition for Rehehear of the verification of the record.

Upon consideration, we affirm the judgment of the district court . Under Tennessee law relating to claim of legal malpractice, a lawyers standard of conduct to be measured against the degree of care, skill and diligence which is commonly possesed and exercised by attorney practicing in the same jurisdiction. See Spalding v Davis, 674 S.W. 2d 710 714(Tenn.1984 Cleckner v Dale, 719 S.W. 2d 535, 540(Tenn.

App. 1986). the question of whether a lawyer's conduct departed from the appreciable standard of care is to proved by expert testimony. Cleckner, 719 S.W. 2d at 541.

Review of the transcript reveals that, although Polyak called three attorneys as witnesses in her case-in- chief, she utterly failed to elicit the standard of conduct owed by attorneys practicing in the same jurisdiction. Moreover, Polyak failed to prove that Stack departed from the standard of care owed by an attorney. Accordingly, the district court's entry of a directed verdict in favor of the defendants and the dismissal of Polyak's suit with prejudice is affirmed.

We further hold that the district court did not err in failing to grant rescual motion filed by Polyak, since the motion asserted predicated soly on the judge's prior judicial conduct. See Easley v University of Michigan, 853 F.2d 1351,1355(6th Cir. 1988).

The motion and amended motion filed in

this court seeking to stay the sale of Tennessee property is not proper. Plaintiff's claim in this suit is one of legal malpractice and the defendants have no interest in the property which is subject of the state court judgment.

Further, Polyak's motions seeking to verify and supplement the record and the Petition for Rehear are not well taken.

Accordingly, the motions for stay, the motions to verify and supplement the record on appeal and the Petition for Rehear are denied. The judgment of the district court dismissing Polyak's suit with prejudice is hereby affirmed pursuant to Rule 9(a)(5), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green, Clerk

MANDATE ISSUED:June 30, 1989

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

RECEIVED OCT 20 1989

v

TO CHIEF JUDGE
No. 89-5717/63/94

THOMAS STACK AND
HENRY HENRY & STACK

OBJECTION TO
PRO SE APPELLANT BRIEF

Appellant is adversly affected and objects to Clerk's identification and classification of the above styled appeal PRO SE APPELLANT'S BRIEF in form. she has paid one hundred five $105.00) dollars to appeal this case Appellant believes this form is designed for forma pauperis and her pro se appeal is paid, and this discrimination is denial of due process and deprivation of of civil and constitutional rights, in adverse treatment provided to pro se in bias for lawyers.

On the 10th day of October 1988.

Signed Earlene Polyak
3179 Middlefield Dr.
Trenton, Michigan 48183

I certify that a true copy of this pleading has been mailed First Class to Bruce Peden, 29 Public Square, Columbia, Tennessee 38402

Signed Earlene Polyak

No. 86-5199

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
Plaintiff-Appellant FILED MAR 9 1987

v Appeal No. 86-5199
Dist. No. 1:85-0125

THOMAS STACK AND
HENRY HENRY & STACK
Defendants-Appellants

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Appellant gives notice of appeal to the order affirming the District Court Denial of Request for Reconsideration of Restraining of sale of her retirement home in volved in negligence claim against Appelleeson March 3, 1987 to the Supreme Court of the United States

The United States Court of Appeals took jurisdiction of this case, and appeal pursuant to 28 U.S.C. 1254(2).

On the 6th day of March 1987.

Signed Earlene Polyak
3179 Middlefield Dr.
Trenton, Michigan 48183

I certify that a true copy of this pleading has been mailed to Mr. william B. Cain, 119 S. 1st.St, Pulaski, Tennessee 38478.

Signed Earlene Polyak

No. 86-5199

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

FILED MAR 3 1987

Plaintiff-Appellant

v

THOMAS STACK AND
HENRY HENRY & Stack

Defendant-Appellees

Before: GUY Circuit Judge; EDWARDS, senior Judge and EDGAR District Judge.

The Court having received a petition for rehearing en banc, and petition having been circulated not only to the original panel but also to all other active Judges of this court, and no judge of this court having requested a vote on the suggested rehearing enbanc, the petition for rehearing has been referred to the original panel.

the panel reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case, Accorcingly petition is denied.

ENTERED BY ORDER OF THE COURT

No. 86-5199

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

FILED JAN 5 1987

V

THOMAS STACK AND
HENRY HENRY & STACK

BEFORE: GUY,Circuit Judge;Edwards, Senior Judge and EDGAR, District Judge.

The plaintiff appeals the order denying her motion for a "restraining order" in this diversity action for legal malpractice. The defendants now move for dismissal of the appeal on grounds the oreer is nonappealable. that motion was referred to this panel pursuant to Rule 9(a),Rules of the Circuit Court.

This action arises from Tennessee state case proceedings which resulted in an order for the partition sale of farm property jointly owned by plaintiff and her two siblings.In her pro se complaint the plaintiff claimed that adverse decision in those proceedings resulted in part from negligent performance of retained counsel -the defendants herein. In addition to

damages-however, she sought injunctive relief prohibiting the sale of the farm property. To that end, she submitted a proposed "restraing order" enjoining anyone associated with or employed by the defendants from seizure, sale by any means including "Public Auction" of the property. The district court sumarily denied that proposed order by notation.

the defendants argue that the district court's order was one of denying a temporary restraining order,which except in extraordinary circumstances cannot be appealed either 28 uSC 1291 Or 1292(a)(1). See generally, Petraco -Valley Oil and Refining Co., v U.S. Department of Energy,633 F 2d 184 199(T.EC.C.A.) the district court, construed the order as a motion for either temporary restraining order or a preliminary injunction. Given Pro Se Status of the pendency action, we conclude the district court's order as a preliminary injunction. This court has jurisisdiction to review to review that order under 28 USC1292(a) 1)

Upon examination of the record and briefs this panel agrees unaminously that oral argument is not needed. Rule 34(a) Federal rules of Appellate Procedure,because plaintiff's claim is for malpractice and defendants have not interestin the property which is the object of the state court judgment, the district court did not abuse discreationin summarily denying the proposed injunctive relief.

It is ordered that themotion to dismiss be and it is hereby denied.

It is ordered further that district court's denial of preliminary injunction is hereby affirmed Rule 9(d)(2).

Entered by order of the clerk

Signed John P. Hehman

APPENDIX B

In the United States District Court, Middle District of Tennessee.

Earlene Polyak v Thomas Stack and Henry Henry & Stack No. 1:85-0125.

Order dismissal on June 3, 1988.

Motion for a New Trial denied on June17, 1988. New Notice of Appeal June 17, 1988.

Motion to Quash Subpoena William B. Cain granted on May 31, 1988.

Affidavit Mary Mitchell filed June 22, 1988.

Presiding: The Honorable Thomas A. Higgins.

ORDER :REQUEST FOR RECONSIDERATION OF DENIAL denied on January 6, 1986. Notice of Appeal to Court of Appeals January 7, 1986.

Presiding: the Honorable Thomas A. Wiseman.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK FILED SEPT 30 1987

V No. 1:85-0125

THOMAS STACK AND
HENRY HERNY & STACK

MOTION FOR RECONSIDERATION
OF MOTION TO DISQUALIFY

Plaintiff pursuant to 28 u.S.C. 144, moves for reconsideration of denial of motion to disqualify on September 24, 1987. Motion was timely submitted on September 18, 1986, and copy was served on Defendants.

In Affidavit motion for continuance and Memorandum on July 1, 1986, was based on extreme burden in 1:86-0086. She learned that over one hundred (100) people died in heatwave in Tennessee.

Plaintiff believes that Judge Higgins has a personal bias in favor of advesse parties.She moves that her cases be reassigned.

On 28th day of September. 1987 313 671-3364
Signed Earlene Polyak, Trenton, Mi.

I certify tahat a true copy mailed to Mr. Michae Cain, Pulaski, Tenn. 38478.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

V

THOMAS STACK AND
HENRY HENRY & STACK

FILED JUN 11 1988

No. 1;85-0125

NEW NOTICE OF APPEAL

Plaintiff gives new notice of appeal to the denial of motion for a new trialon June 17 1988, Rrule 4(4)(iv) 59 FRAP to the United States Court of appeals, for conflict of interest and failure to rescue by the Honorable Thomas A. Higgins. Motion for a New Trial filed on June 13, 1988, prior to denial of appeal filed on June 30,(motion held without action)and notice of appeal filed on June 28, 1988. Plaintiff understands that no additional fees (other $105.00) required.

he district Court continues to deprive Plaintiff of federal protection of equal protection of due process and deprivation of civil and constitutional laws and property rights and jury trial for irreparable damage

in negligence of lawyers, in protection of constitutional rights and interests in properties and loss of right and interest to never be regained in retirement home.

On the 7th day of July, 1988.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this pleading has been mailed to the Court of Appeals, Cincinnati, Ohio 45202, and Bruce Peden 29 Public Square, Columbia, Tennessee 38402

Signed Earlene Polyak

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK — FILED JUN 30 1988

V — No. 1:85-0125
Judge Higgins

THOMAS STACK AND
HENRY HENRY & STACK

NOTICE OF APPEAL

Plaintiff gives notice of appeal to the United States Court of appeals for the Sixth Circuit to the directed verdict of the Hon. Thomas A. Higgins for conflict of interest and failure to rescuein order June 3, 1988, and entered on June 6, 1988, and denial of due process and deprivation of right and laws

TIMELY MOTION FOR A NEW TRIAL filed on June 13, 1988pursuant to Rule 59FRAP has been disregarded and only a few days to appeal es-cessive charges for research and and to go against friends in Lawrenceburg,""it is my understanding if we are not successful in Lawrenceburg, we will appeal to a higher Court." Defendants did not prepare for appeal

entering bills for restoration of retirement home, invalid real estate evaluation, memorandum brief and transcript of proceedings on July 29, 1983.

Pro se litigant is obligated in Court with financial burden andstress on heart to appeal in bias for lawyers.

On the 28th day of June, 1988.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this pleading has been mailed to the United States Court of appeals, 45202, and Mr. Bruce Peden, 29 Public Square, columbia, Tennessee 38402.

Signed Earlene Polyak

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILED JUN 17 1988

B

No. 1:85-0125
Judge Higgins

THOMAS STACK,et al.,

ORDER

The plaintiff's motion(filed June 13, 1988) for a New Trial is denied.

It is so ordered.

Thomas A. Higgins

6-17-88

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK FILED 6-6-88

V No. 1:85-0125
Judge Higgins

THOMAS STACK AND
HENRY HENRY & STACK

ORDER

For reasons set forth on the record June 3, 1988, the defendant's motion for a directed verdict, made at the conclusion of Plaintiff's Case in Chief, is granted and this action is dismissed with prejudice.

The Clerk is directed to enter judgment accordingly.

It is so ordered.

Signed Thomas A. Higgins

1-3-88

- 22 -

entering bills for restoration

- 25 -

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

Plaintiff

v

THOMAS STACK AND
HENRY HENRY & STACK

FILED DEC 26 1985

No. 1:85-0120

REQUEST FOR RECONSIDERATION OF
DENIAL OF RESTRAINING ORDER

Petitioner requests this Honorable court reconsider temporary restraining order issued December 13, 1985, which was submitted in the above styled case against seizure and sale by Public Auction, or any means, of her real and pesronal property located on Jonestown Road and MARCELLA Road in the 14th Civil District pf Lawrence County, Tnnessee, pending all case concerning this property.

the petition for removal of the above entitled civil action to this court is on grounds that Petitioner has been denied by state court proceedings her rights secured and gurar nteed by the constitution. Signed

DENIED JANUARY 6, 1986 Thomas A. Wiseman

id real estate eval

randum brief and transcript of

July 29, 1985.

Judge Wiseman

Pro se litigant is obliga

Lawrence Law

with financial burden andstres

appeal in bias for lawyers.

the 28th day of June,

Respectfully

Earlene Pol
3179 Middlef
Trenton, Mic
(313) 676-33

Certificate of Servi

I certify that a true copy
dfng has been mailed to the Uni
Court of appeals, 45202, and Mr
29 Public Square, columbia, Ten

Signed Earlene Pol

BEST AVAILABLE COPY

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK filed 6-22-88

V

No. 1:85-0125
Judge Higgins

THOMAS STACK AND
HENRY HENRY & STACK

ORDER

The Court is in receipt of an Affidavit dated June 16, 1988, from Ms. Mary Mitchell.

The Clerk is directed to file this affidavit as a part of the record.

It is so Ordered.

Signed Thomas A Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK No. 1:85-0125

v

THOMAS STACK AND FILED: June 21, 1988
HENRY HENRY & STACK

AFFIDAVIT

To whom it may concern;

My name is Mary Mitchell. I live at R #3 Box 63B Lawrenceburg, Tennessee 38464.

On or about Sept. thru Nov. of 1987, I was reading my newspaper the Laurence County Advocate, when a familiar name caught my eye. The name of that person was Earlene Polyak. Realizing I had met her on about 3 occasions in the past, I read more, out of curosity. The contents of the article was non-resident of some sort. The content of the article revealed the intent to sale of some property that sounded familiar to me. In some correspondence in which I last received from Earlene Polyak some years ago. She had revealed to me that she own a mobile home situated on some property

here in Lawrence County, TN. Upon meeting her again some 6 months after I had read the article, I casually mentioned it to her, at this time, she informed that she knew nothing of this.

This is all the knowledge I have of this situation.

Signed Mary Mitchell

COUNTY OF LAWRENCE
STATE OF TENNESSEE

Sworn and subscribed before me this 18th day of June, 1988.

My commission expires: August 8, 1988

Signed Mabel Evelyn Hedgepath, Notary Public

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL
Plaintiff

FILED DEC 19 1983

v

No. 1974

EARLENE POLYAK
Defendant

JUDGMENT

This cause came on to be heard on this the 19 day of December 19, 1983, before the Honorable Jim T. Hamilton, Judge upon the motion this day filed by Defendant, personaly on her own behalf, state and argumentof the Defendant personally from all which the Court finds there to be no merit, and said motion is here and now overruled.

This 19th day of December, 1983.

Signed Jim T. Hamilton

CERTIFICATE OF SRVICE

The undersigned certifiesthat a true copy of this pleading addressed to said counsel at his office .

Signed Charles Holt
Boston Bates & Holt

State case dismissed on above UNAPPEALABLE JUDGMENT on April 24, 1984, NO FINAL ORDER.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

V

FILED DEC 3 1985

THOMAS STACK

ORDER

Although imporperly styled Petition for this case appears to be an action for attorney negligence. Diversity exists, and jurisdicational amount is alleged. this pleading has been indulged with every reasonable presumption because of plaintiff's pro se status. Although it contains many of the same allegations and requests for relief made in plaintiff's numerous other frivolous filings in this Court,this petition presents allegations of attorney negligence or malfeasance which allow it survive initial review. It is filed within one year after the order of nonsuit was entered by Judge Hamilton(order entered by the Honorable James L Weatherford) of the similar suit in Lawrence County. the injunction is modified.

Signed Thomas A. Wiseman Jr.

APPENDIX C

Opinions relating to this case from companion cases:

Unappealable Judgment to hearing before State Judge on December 19, 1983. Appela dis missed on on pro se appeal of UNAPPEALABLE JUDGMENT ON April 26, 1984.

Initial order for sale of property without any compensation, without jury trial, and appeal has not been heard in any Court on October 19, 1983.

Buford Evans hand-drawn-map alleged to show property divided equally, which correlates in Tract # 3, with Item # 2 in order to sell because could not be divided equally prepared by Boston Bates & Holt.

Buford alleges map drawn for Thomas Stack Henry Henry & Stack, and filed second lein within three days after Robert Boston's second order to sell property for his invalid lein.

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY
Plaintiffs

Civil Action No. 1974

v

EARLENE POLYAK
Defendant

ORDER

Upon motion of Plaintiffs to sell that certain parcel of land formerly at issue in this lawsuit, said sale having previously been ordered by this Court and said Court having been affirmed through all stages of the Appellate process, it is hereby ordered as follows:

1. Col. Eulan Hooper is hereby authorized and directed to advertise, on behalf of the parties herein, the sale of land in Exhibit 1 hereto under the following terms and conditions of this order:

Mr. Hooper will advertise said sale in a newspaper of general circulation in Lawrence County Advocate said sale to be conducted at

public auction pursuant to this order on a Saturday at 10:00 a.m., said date to be determined by Mr. Hooper and set out in the advertisements, and not to be less than 21 days following the entry of this order. Said advertisement shall be run in no less that three separate issues of said newspaper prior to the date of such sale. Said sale shall be conducted in a manner consistent with normal and usual practice for auction sales held in Lawrence County, Tennessee and the land shall be sold to the highest best bidder for case, 10% of payment to be delivered on the date of sale and held by Mr. Hooper in trust for deposit into the registry of the Court on the following Monday. The remainder shall be due by 12:00 noon on aforesaid "following Monday payable to the Lawrence County Clerk and Master's office, who shall in turn deposit into the Court's registry.

2. Upon deposit of said funds into registry of this Court, the Clerk and Master is directed and authorized to prepare an

appropriate deed conveying title to the property as ordered herein to the purchaser of said land at auction, or his or her designee or assign. Said deed shall divest all parties hereto of all right, title and interest in and to said land pursuant to this and previous orders of this Court.

3. Upon delivery of the above-referenced deed, and payment of the purchase price for the land into the registry of this Court, the Clerk and Master shall divide the net proceeds equally among the parties hereto, after having paid Eulan Hooper a fee for his services in connection with said auction as ordered herein in the amount of 6% of the gross amount received at said auction, plus reimbursements for any reasonable costs incurred in conducting said auction sale. In addition, the Clerk and Master shall be paid a fee for her services as set out herein in the amount of $250.00, and shall pay from defendant's portion of the proceeds, all Court

costs incurred since this case initially filed. Thereafter, the Clerk and Master shall pay to parties hereto the net amount due each party pursuant to the Court's partition, subject, however, to payment by the Clerk and Master all debts of all creditors of record of any party who have a lein against any interest in said land as a result of leins against party's interest therein. Such leins of record shall attach to the proceeds of the land the same as same attached to the actual land.

4. All other matters are reserved pending further of the Court.

So ordered this _____ day of September, 1987.

Hon. Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:

Signed Robert Boston
Attorney for Plaintiffs

Lein placed by Robert Boston on December 12, 1984 NOTE BOOK 19, p. 270, Lein Book 7, pp. 497-499 by Geneva Frisbee. This lein for

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN, ET AL
Plaintiffs

FILLED OCT 19 1983

v

CIVIL ACTION NO. 1974

EARLENE POLYAK
Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge, Part II of the Circuit and Chancery Court in Lawrence County, Tennessee. While holding Chancery Court for Lawrence County, Tennessee, upon complaint hereto filed in this cause, the Answer therto, the testimony of witness in open Court, and the entire record in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the Court found in memo dated August 11, 1983, the following:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there are three distinctly different types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is no way to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Eulan Hooper unless the parties agree on another real estate company.

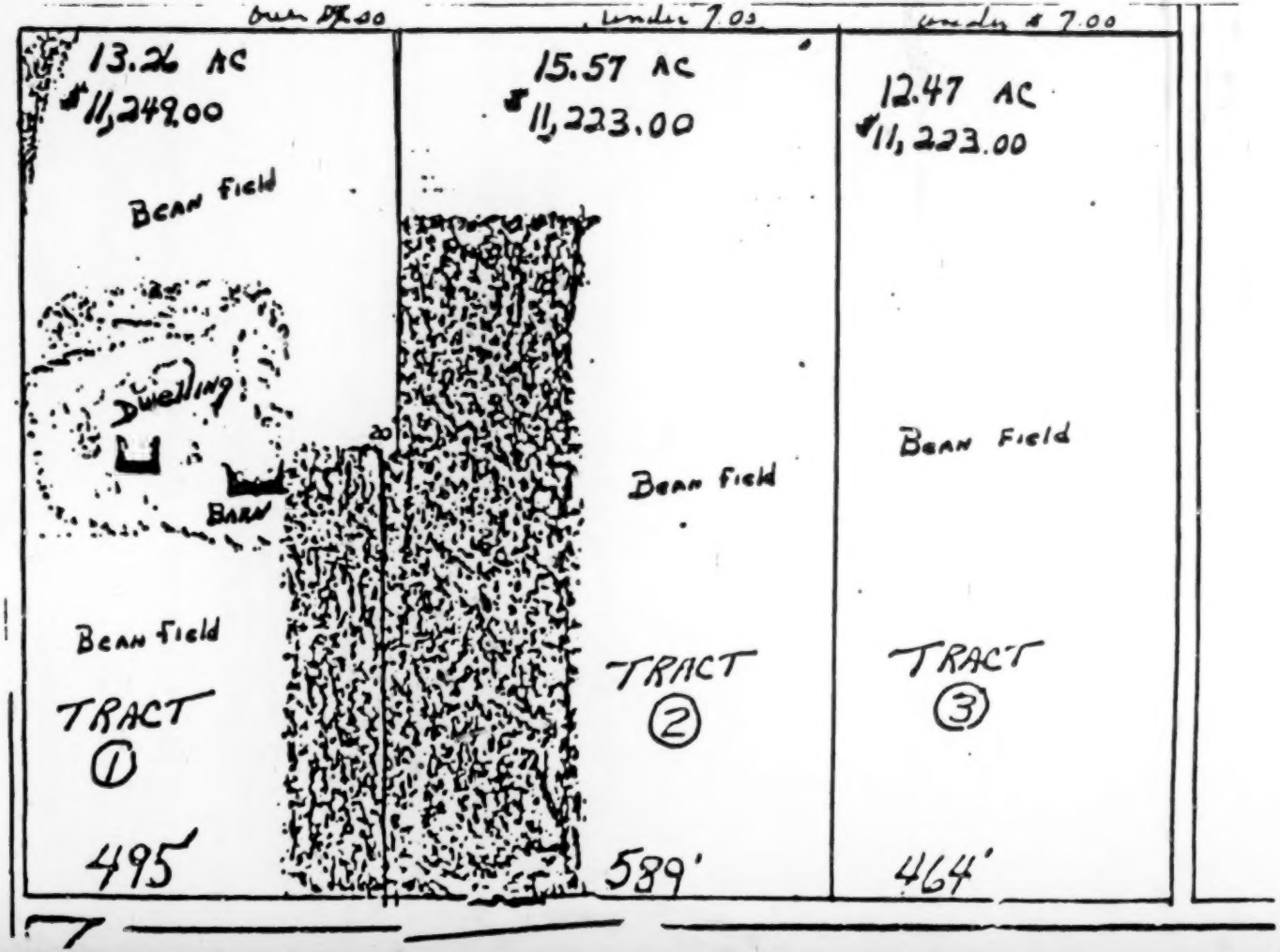
All of which is therefore, ORDERED AND DECREED by the Court.

This the 19th day of October, 1983.

Signed Jim T. Hamilton
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:
BOSTSON BATES & HOLT

Signed William Boston
Attorney for PLAINTIFF
Signed Thomas Stack



BEST AVAILABLE COPY

IN THE CHANCERY COURT
FOR
LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY
Plaintiffs

(Henry Henry & Stack sub- to State Judge but was not entered on AUG 5 1983

v

No. 1974

EARLENE POLYAK

MEMORANDUM BRIEF

On July 29, 1983, a hearing was held in above styled cause before the Honorable Jim T. Hamilton, at Columbia, Tennessee.

The issue: in the case raised by the parties pleadings were:

(1) Whether the subjected property can be partitioned in kindor, in the alternatively, whether it is manifestly to the advantage of the parties that it be sold for partieion or so situated that it is not feasable or practical to divide in kind.

(2) Whether there has been a parole partition of this property in kind in reliance up on which Defendant has made imporvements on the house situated on subject property.

This action is governed partly by the provision of TCA 29-27-201 et seq. It is also governed by a body of case law,pertient portions cited herein.

PARTITION IN KIND FAVORED OVER SALE FOR PARTITION.

The party insisting on a sale must show clearly by the facts that neccessity for such saleand nothing short of the clearest and most satisfactory proof could justify the Court in ordering a sale against the protest of one(1) of the tenants in common. Reeves v Reeves, 58 Tenn 669,Vandenburg v Molder,4 Tenn. Civ. App. (4 Higgins)III.

Parition in kind at common law was a of absolute right, Sale may not be ordered without good cause shown. the applicant for sale must show the existance of such a state of facts for sale, under statute, will be sufficient to rebut the presumption of lawthat each of the parties is entitled to an actual partition, The onus is always on he who seeks sale. Bevins v George,255 S.W. 24 409.

BURDEN OF PROOF

The burden of proof where partition for sale clearily rests heavely on the party.

The mere opinion of a witness without facts sustaining it that property cannot be parttioned and must be sold is insufficient based on thereon will "utterly void." Davidson v Bowden 37 Tenn.129;Ross v Ramsey,40 Tenn 15.

Again, nothing short of the clearest and most satisfactory proof could justify ordering sale against the protest of one(1) of the tenants in common. Reeves vReeves, 58 Tenn. 669;Vandenburg v Molder supra: Glen v Gresham 602, S.W. 2d 256.

PARTITION IN KIND IS A SEPARATION BETWEEN OWNER

It is not a conveyance and, therefore,not governed by statute of frauds. An agreement for partition between co-tenants may be proved parole evidence. Fisher v Loague,3 Tenn (Shannon)123;Meachum v Meachum,19 S.W. 757 91,Tenn532.McBroom v Whitefield,108 Tenn.422 McCaultyv Peoples,4 Tenn App. 488.

Where tenant in common at his own expense puts improvements on common property,and after wards partition is made,such improvements should be alloted to the share of the party making the improvements, and without any charge for their value. Polk v Gunther,107, Tenn. 16;Broyles v Waddell,58 Tenn 32.

The cost of the improvements can be allowed to sucn co-tenant; that co-tenant is not merely limited to the amount by which those improvements have increased the property. Wilburn v Kingsly, 3 Tenn.App.88.

If exact partition cannot be made without material injury to the parties, or some one of them (the commissioners), make make partition as nearly equal as they can and charge the larger shares with the sums neccessary to equalize all shares, and report the facts. TCA 29-27-549, Hardin v Cogwell, 52 Tenn.549 Burdett v Norwood,Tenn 491

COURT HAS GENERAL AND EQUITABLE POWERS

A Court of equity in a partition case

does not act merely in a ministral capacity, butfounds itself on general principles of equity according to its own notion of equal justice and equity between rights of the parties interested. Sproles v Gre?96 S.W. @d

PROOF IN CASE

No summary will be made of the proof adducted at the trial. The Court gas its own notes and records of what was established by both sides at this hearing. Defendant will rely upon these facts and the applicationof the above cited law thereto.

Respectfully submitted,

Signed Thomas Stack
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